UK Alternative Business Structures for Legal Practice: Emerging Models and Lessons for the US

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ABSTRACT

Alternative Business Structure (ABS) law firms in the United Kingdom allow for non-lawyer owners and investors. This Article analyzes several new U.K. ABS law firms and offers an optimistic assessment of the benefits of these new firm models. ABS firms have created systems that improve legal services for the target clients and have mitigated the negative aspects of lawyer-centric thinking that pervades many traditional firms. ABS firm structure has provided access to capital to allow for investment in employee development and creative use of technology. The ABS form has brought some unregulated activities under the control of regulators and created the possibility of linking legal services to other socially-conscious pro-consumer service providers. Risks emerging from these early entrants into the ABS form include a concern about whether the public aspects of lawyering, such as public oriented duties to improve the legal system and offer pro bono services, become lost in a dominant corporate and client-centered model. If so, a regulatory response may be required to correct this imbalance.

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I. Introduction

Should non-lawyers be able to own or invest in law firms?\(^1\) The United Kingdom adopted a new Legal Services Act in 2007 that created...
a regulatory structure to encourage competition in the delivery of legal services. One of the most interesting and provocative U.K. initiatives was allowing alternative business structure (ABS) firms, which have some form of non-lawyer involvement in the ownership and/or management of the firm. The fruits of that reform have begun to appear, with over 400 ABS firms approved by the Solicitors Regulation Authority between the first license on March 26, 2012, and July 31, 2015. The ABS process aims to encourage creativity, with a commitment “to a level playing field—there should be no favours or benefits for particular business models.”

This Article examines some early U.K. ABS firms and offers an optimistic assessment of the benefits that are appearing. Some fascinating models have emerged that allow for easier experimentation in delivery systems.

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3. Setting up and ABS, The Law Soc’y http://www.lawsociety.org.uk/advice/articles/setting-up-an-abs/ (“An ABS is a regulated organization which provides legal services and has some form of non-lawyer involvement. This involvement can either be at the management level e.g. as a partner, director or member; or as an owner e.g. an investor or shareholder.”).

4. Several regulators have the ability to issue ABS licenses, but the SRA is the most active. See ABS REGISTER, http://www.sra.org.uk/absregister/ (last visited Jan. 25, 2016).


6. The methodology is qualitative, beginning with approximately two months of preliminary brainstorming in 2013 with regulators, academics and solicitors and non-lawyers thinking about or forming ABS firms. There is a healthy amount of public information on ABS firms via the Solicitors Regulation Authority, which is the main focus of this study. The Solicitors Regulation Authority maintains a scholar’s dream source of data and information. Consistent with their goal of transparency, they provide ongoing data of approved Alternative business structures (ABS) for legal services. See Register of Licensed Bodies, SOLICITORS REGULATION AUTH., https://sra.org.uk/solicitors/firm-based-authorisation/abs/abs-search.page (last visited Jan. 25, 2016) [hereinafter Register]. Through articles, essays and blogs, LegalFutures conferences, Stanford Center on the Legal profession lectures, discerning commentators have offered on-the-ground insights into forces that are shaping the various ABS firms. In most cases the ABS firms also have a significant public profile on the web. After selecting a few cases studies I followed up with interviews of a select number of ABS firms, advisors and regulators who were willing to speak with me. Interviews were done after receiving Boston College Institutional Review Board approval (Mar. 7, 2014).

Some small firms transitioned to ABS status to provide key actors an ownership interest in the firm, allowing the firm to acknowledge contributions and retain those key actors.

Riverview Law focuses on providing systematized legal services to corporate clients through flat fee and team-based services.

Cooperative Legal Services builds on a pre-existing cooperative brand in food, banking and funeral services to provide affordable legal services to middle-income clients.

LegalZoom, the first U.S. legal services provider to expand into the United Kingdom to create a law firm, anticipates that the ABS form will allow it to provide more integrated legal services with their online resources.

Personal injury firms, which have widely varying models including firms owned by insurance companies and private equity companies, have streamlined the small-claims market in the United Kingdom.

Specialty firms have created non-profit and for-profit partnerships, with any profits used to support the non-profit unit.8

The ABS structure allows new entrants to avoid the legacy issues such as billable hours; allows lawyers to be true partners with non-lawyers so that they can avoid the negative aspects of lawyer-centric thinking that pervades many traditional firms; provides access to capital to allow for investment in personnel, infrastructure, marketing and creative use of technology; in some cases brings the legal services provider under the control of regulators to provide clients with additional protection; and creates the possibility of linking legal services to other socially-conscious pro-consumer service providers.

It is important to note that the ABS firms are subject to regulations that require them to have systems in place to assure that the solicitor’s professional obligations are met.9 The limited data monitoring complaints has not shown an increase in disciplinary action against lawyers in ABS firms, although the numbers are still small.10 This is an area that should be subject to continued and close monitoring.

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10. It can be hard to disentangle the interaction of ABS structure and entity regulation. Data from Australia indicates that complaints against lawyers went down after the move to entity regulation. Tahlia Ruth Gordon, Steve A. Mark & Christine Parker, Regulating Law Firm Ethics Management: An Empirical Assessment of an Innovation in Regulation of Incorporated Legal Practices, 37
One emerging issue is how public-oriented aspirational obligations, such as a duty to improve the legal system and provide pro bono services, will be developed or changed under an ABS model. Pro bono is a fairly new concept in the United Kingdom, which until recently had more robust public funding for civil legal services for the poor. The corporate models described below raise a question whether aspirational public benefits, such as pro bono, collapse into a larger concept of corporate social responsibility and the consequences of that change. This is an area that needs to be monitored as new models emerge.

II. OVERVIEW OF ISSUES

Allowing ABS firms reflects two important changes in attorney regulation in the United Kingdom. First, ABS structure is made possible by entity regulation, which supplements the traditional focus regulating the individual solicitor, barrister, or other legal professional. The firm itself, not just individual lawyers, is also licensed and regulated. As part of entity regulation, every U.K. firm (including ABS firms) must have a Compliance Officer for Legal Practice (COLP), who is responsible for assuring compliance with the professional obligations of the firm, and a Compliance Officer for Finance and Administration (COFA), who is responsible for assuring that sound financial and management practices are being maintained. Second, the regulatory changes create a structure to reorient legal services from a lawyer-centered focus to a client and customer-oriented perspective.

The U.S. bar has staunchly resisted non-lawyer ownership and investment, while Australia, the United Kingdom, and several European countries have dropped the prohibition. Canada is on the road to
allowing ABS firms.¹⁶ The Australian experience has garnered some attention in the United States but both the comparatively small size of their profession and its geographic distance may have caused their experience to be less influential in the United States. The United Kingdom’s more recent liberalization has a much higher chance of influencing the U.S. legal profession given the United States’ closer physical, economic, and historic ties. Both the United States and the United Kingdom embrace similar aims of regulating the legal profession to promote the dual goal of protecting consumers/clients and supporting the rule of law, which includes assuring that professional principles are met.¹⁷ Yet in the question of insularity of the legal profession—kept separate and distinct from non-lawyers—our systems take starkly different approaches.¹⁸

Scholars have been much more receptive and supportive of non-lawyer owners and investors than the U.S. practicing bar.¹⁹ Bar resis-
tance takes two forms. The first concern is competition, although overt reference to not wanting competition is quickly curbed in discussions because of antitrust concerns. The second publicly discussed issue is concern for the erosion of the professional independence of lawyers. The latter issue is often discussed with prophetic rhetoric that emphasizes the core values of lawyer independence, and expresses deep and understandable concern for the professionalism of lawyers. Aside from the specific obligations of the Rules of Professional Conduct, the legal profession does not have a concrete and universally accepted definition of independence, professionalism, professional identity, or legal judgment. But whatever words are used, there is a core concern that non-lawyer ownership and investment in law firms will expose lawyers to the unfettered pressures of the market place.

Discussions of non-lawyer ownership and investment often include an abstract and idealized version of professional independence that is

20. See Goldfarb v. Virginia St. Bar, 421 U.S. 773, 788, 793 (1975) (finding that lawyers are not exempt from antitrust laws); N. Carolina St. Board of Dental Examiners v. F.T.C., 135 S.Ct. 1101, 1114 (2015) (holding that federal antitrust law applies to State Board of Dental Examiners efforts to extend practice of dentistry to teeth whitening services where state delegated its regulatory power to active market participants; federal antitrust law prohibits anticompetitive self-regulation).

21. See Robinson, supra note 12, at III(B). For an excellent discussion of lawyer independence see Bruce A. Green, Lawyers’ Professional Independence: Overrated or Undervalued, 46 Akron L. Rev. 599 (2013). One effort to support independence is the long-stated concept of self regulation. The erosion of self-regulation is well-documented, so that the legal profession is now more properly understood as regulated by multiple sources, both internally and externally. Fred C. Zacharias, The Myth of Self-Regulation, 93 Minn. L. Rev. 1147 (2009).


compared against the possibility of erosion of the ideal.\textsuperscript{25} Reports from practice, however, indicate that lawyers in the current system face unrelenting pressures to erode their professional practice.\textsuperscript{26} The tension between profits and ethics is endemic in law, as it is in all other business ventures.\textsuperscript{27} One important question is whether ABS structure will enhance the pressure, and whether regulation can be effective in blunting it.

Further complicating the discussion is the reality that some lawyers have very poor business acumen, such as lack of organizational skills, poor systems of communication with clients, and excessive caseloads, which makes them vulnerable to ethical violations. In other words, in some instances it was the dearth of good business insights that led to the professional failures.\textsuperscript{28}

\begin{footnotes}
\item[26.] See BENJAMIN H. BARTON, \textit{GLASS HALF FULL: THE DECLINE AND REBIRTH OF THE LEGAL PROFESSION} 203-13 (2015) (analyzing complaints against lawyers, concluding that there is “good reason to doubt the sincerity of bar associations warning about the potential harms to clients by non-lawyers”); Wendell, supra note 22, at 361-63. The organized bar recognizes that there are serious problems in current delivery models. In 2014, ABA president William C. Hubbard appointed the ABA Commission on the Future of Legal Services, which among its missions seeks to “foster the development of financially viable models for delivering legal services that meet the public’s needs” and look at “new models for regulating legal services.” See William C. Hubbard, \textit{ABA Commission on the Future of Legal Services, Report to the House of Delegates}, AM. BAR ASSOC., http://www.americanbar.org/groups/centers_commissions/commission-on-the-future-of-legal-services.html (last visited Jan. 25, 2016) (“The American Bar Association (ABA) is well-positioned to lead the effort to improve the delivery of, and access to, legal services in the United States. The ABA can inspire innovation, leverage technology, encourage new models for regulating legal services and educating tomorrow’s legal professionals, and foster the development of financially viable models for delivering legal services that meet the public’s needs.”).
\item[28.] \textit{See}, e.g., Judith A. McMorrow, \textit{In Defense of the Business of Law}, 40 FORDHAM URB. L.J. 459 (2012); Tahlia Gordon \\ \\ & Steve Marks, \textit{Access to Justice: Can You Invest in It?}, CREATIVE CONSEQUENCES
\end{footnotes}
Bar resistance to non-lawyer owners and investors inevitably focuses on a lawyer-centric model of service delivery. This focus offers a very important benefit because it allows the conversation to address the ethical and fiduciary obligations of the lawyer. But a lawyer-centered focus can blind the legal profession. Maintaining lawyer control over all private sector delivery models (i.e., law firms) rests on claims of lawyer exceptionalism. In essence, the argument is that professional obligations of lawyers offer the only place to introduce professional skills and values to the legal system. ²⁹ While there are areas in the current market in which lawyers and non-lawyers offer services to the same sector (tax, accounting, patent, immigration, labor arbitration, etc.), this Article embraces the recognition that there is important value-added to a lawyer’s contribution to an enterprise. This does not lead inexorably to a conclusion that only lawyers can do certain tasks. Many commentators have debunked this idea thoroughly.³⁰ The sheer growth of law and its ubiquitous placement in society increasingly calls into question the lawyer’s claim of superiority in all aspects of legal analysis and service delivery.³¹ Prof. Stephen Mayson offers a strident, almost painful, critique:

There is an insidious consequence of believing that lawyers are the best, or only, resource for all tasks: it is that it downplays and demeans the ‘non-lawyer’ input, whether that is another person, technology, a process or management. It is not surprising that there is an ‘us and them’ divide between lawyers and others, that inefficiencies persist, or that potential remains unrealized, when such an unhelpful and insulting attitude is prevalent.³²

²⁹ The phrase “legal system” can be ambiguous. See, e.g., Sung Hui Kim, Lawyer Exceptionalism in the Gatekeeping Wars, 63 SMU L. REV. 74 (2010); Leslie C. Levin, The Monopoly Myth and Other Tales About the Superiority of Lawyers, 82 FORDHAM L. REV. (2014); Bridgette Dunlap, Anyone Can “Think Like a Lawyer”: How the Lawyers’ Monopoly on Legal Understanding Undermines Democracy and the Rule of Law in the United States, 82 FORDHAM L. REV. 2817 (2014); MORGAN, supra note 23.
³⁰ Levin, supra note 29; see Perlman, supra note 7.
Even the framing of “lawyer” as compared to “non-lawyer” puts lawyers as the essence and pushes the rest of the world to the periphery. Imagine an alternative framing in which professionals come together to resolve problems, with professional lawyers, information specialists, and client managers all focusing on the shared goal. A blanket ban on non-lawyer partners and investors denigrates the possibility of significant, equity-justifying contributions by non-lawyers, either through business or IT expertise, or as a non-lawyer specialist. Lawyers too often act like lawyers own the law.

The claim of lawyer exceptionalism is ultimately overbroad and collapses all aspects of legal services, from small repetitive claims to complex mergers and acquisitions, into one lump. It also ignores the reality that in-house corporate counsel function as a captive non-lawyer owner and investor in a “firm” that has a single corporate client.

Another major problem with a lawyer-centric model is that it carries a presumption of amoral or immoral behavior by non-lawyers, a proposition that needs justification. There is also some irony that the organized bar in the United States has maintained this one rule of entity regulation (no non-lawyer owners or investors) but largely resisted other forms of entity regulation that might improve professional independence.

There are legitimate concerns about risks of ABS firms. There is an obvious concern that non-lawyer owners and investors may put their profit maximization goals ahead of professional obligations to clients more often than lawyers might succumb to the same temptation, presumably because lawyers would hopefully have internalized values

33. See Stanford Center for Legal Information, Regulator's Response to the Economic and Tech Forces Transforming the Legal Profession, 22:00-24:00, YouTube (May 6, 2015) https://www.youtube.com/watch?v=Mr9pE0Ap64. (comments of Karl Chapman, founder of Riverview Law); see also Perlman, supra note 7.

34. There is some indication that the moral development of lawyers may be stunted by the legal mentality. See Susan Swaim Daicoff, Lawyer, Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses 41 (2004) (discussing lawyer moral development and moral behavior; “There is evidence that lawyers’ stages of moral development and decision-making styles are consistently and disproportionately focused on maintaining rules, regulations, social order, and conformity; however, there is also evidence that their stage of moral development does not differ from the moral development of other similarly educated adults.”).

35. See, e.g., Elizabeth Chambliss, New Sources of Managerial Authority in Large Law Firms, 22 Geo. J. Legal Ethics 63 (2009).
of ethical conduct through their legal training and practice. A blanket ban reflects skepticism that firm regulation can temper that risk. Even if regulation can temper the risk, it is important to make clear to non-lawyer owners and investors that there is a financial risk that comes from investing in any regulated industry. But regulatory risk is a well-understood concept for those who venture into these waters.

U.S. bar opposition remains in part due to an empirical standoff. In policy discussions and informal conversations, proponents of change point to the benefits of non-lawyer ownership and investment and ask for proof that new models will erode professional judgment; opponents question whether there are meaningful benefits and demand proof that the changes will not impair professional judgment. The Australian and U.K. experiences help fill this information void.

Part III provides additional background information for those new to this topic. Readers familiar with the ABS debate and distinctions between the U.S. and U.K. legal systems may find it useful to go directly to Part III.

III. Framing the Comparison Between the United Kingdom and United States

A. Common Theme: Changing Expectations, Globalization, Competition, Growth of Law, Changing Products

The same forces that are pushing for change in the U.S. legal services market are having an impact in the United Kingdom as well. These forces have been well-described by others. The repeat actor corporate clients “are more demanding buyers of legal services—this can be ascribed to a number of factors, including the consolidation of legal panels, a greater scrutiny on fees and the desire for global solutions


37. See Perlman, supra note 7, at 79 (“The [Ethics 20/20] Commission ultimately cited this paucity of evidence as one of the primary reasons it decided to drop further efforts to amend Model Rule 5.4”).

38. My thanks to Andrew Perlman, Chief Reporter for the ABA Commission on Ethics 20/20, for his insights on these topics.

39. One of the first systematic critiques is by Nick Robinson, who argues that the benefit of non-lawyer ownership has been “oversold with respect to access to civil legal services for poor and moderate-income populations,” pointing to current trends in the early ABS models, and to some examples of ABS firms that raise heightened conflict concerns. Robinson, supra note 12, at 38.
Increased competition provides these knowledgeable clients with stronger leverage. There is also a growing market for legal information analysis, which is a different type of service than traditionally offered by large firms. Technology has also reshaped legal services in some sectors, creating opportunities to rethink entire delivery systems. In the United Kingdom in particular, technology has also “broadened the range of businesses in which solicitors work.”

In addition to these changing expectations, globalization, competition, and the transformative effect of technology is the growth of law and the increase of “space” in which national law no longer provides a quasi-dispositive answer. We live in a thick law environment in developed countries and a world in which transnational practice is filling voids in international law. This ubiquitous nature of law is one factor that appears to drive the increasing focus on interdisciplinary work among legal academics.

These trends have also more sharply delineated the many different markets for legal services. The Legal Services Board, the uber-regulator of the United Kingdom, developed a framework for analyzing legal services, and found deep market segmentation based on the type of consumer (which varied widely even within a particular area of law), type of consumer problem, and the type of legal activity. Commentators have noted that non-lawyer ownership may be more appropriate for areas of law that allow for economies of scale, standardization and management of related costs.

42. Plant, supra note 17, at 2.
46. Robinson, supra note 12, at 38.
B. **Special Features of the U.K. Legal Services Market: Stratified Bar, Reserve Activities, Changing Legal Services Funding and Entity Regulation**

Despite our strong commonalities, there are four important differences between the U.S. and U.K. legal markets that are immediately relevant. First, the United Kingdom has traditionally had a stratified bar, with distinctions between barristers, solicitors and other service providers. Second, the United Kingdom has a narrower definition of what constitutes the unauthorized practice of law, called “reserve activities.”

Third, the United Kingdom is undergoing major changes in funding of legal aid that is pulling back on publicly funded legal services, causing significant disruptions. Finally, as noted above, the United Kingdom has moved to entity regulation as a parallel system of regulation alongside regulating the individual legal professional. This entity regulation focuses on ongoing assessments of risks created by the legal practice and business structure. This pushes all firms, including ABS firms, to think about structural and business choices and how they affect core legal services and ethical obligations.

1. **Stratified Bar**

In the United Kingdom the legal profession has been divided into solicitors, who typically handle activities outside of court, and barristers, who litigate.

The United Kingdom also has other specialized and regulated legal actors, including Licensed Conveyancers, Chartered Accountants, and Intellectual Property practitioners. Deregulation, however, now allows solicitors and barristers to practice together (along with other professionals), which is eroding the distinctions.

47. See Charles W. Wolfram, MODERN LEGAL ETHICS § 15.1, 835 (1986) (provides a history of unauthorized practice of law in the US; notes that “[o]n the whole, state law has been characterized by its broad sweep and imprecise definition). Cf. Reserved Legal Activities (summarized), LEGAL SERVS. Bd., http://www.legalservicesboard.org.uk/can_we_help/faqs/Reserved_Legal_Activities.htm (last visited Jan. 25, 2016); Laurel S. Terry, Putting the Legal Profession’s Monopoly on the Practice of Law In a Global Context, 82 FORDHAM L. REV. 2903, 2907 n.10, 2913-14 (2014) (comparing U.K. with other EU countries, U.K. legal advice is exercised by solicitors and barristers but is not a reserve activity).

48. See STEPHEN, supra note 15, at 68.


Globalization of legal services is also accelerating the erosion of the barrister/solicitor distinction. Global law firms are more likely to talk about “lawyers,” which is the language of the global legal services market, than solicitors and barristers, even as the individual licensed professionals maintain that status.51 The erosion of the regulatory distinctions and the ability of solicitors and barristers to practice together will likely accelerate the move toward the international label of “lawyer,” with all the ambiguities that word may include.

2. Reserve Activities

In the United States, the individual states have unauthorized practice of law (UPL) statutes that give lawyers monopoly power over a broad range of litigation and non-litigation activities.52 That being said, once one digs into the weeds of UPL, the state doctrines are surprisingly fuzzy in application.53 Lawyers can delegate almost all activities, except court appearances, to non-lawyers under the lawyer’s supervision, an important caveat.54 Large categories of work, including the growing fields of compliance and business advising, are areas in which lawyers and non-lawyers compete for work.55 Federal law allows lawyers and non-lawyers to function side-by-side in a variety of contexts, including social security, patent, tax and immigration.56 Even with these complexities, legal practice in the United States functions under the shadow of the UPL doctrine, which is broader in the United States than in most


52. See Alexis Anderson, Custom and Practice Unmasked: The Legal History of Massachusetts’ Experience with the Unauthorized Practice of Law, 94 MASS. L. REV. 124 (2013).


54. Tremblay, supra note 53, at 653.


other countries. As a result, some innovations, such as LegalZoom, must carefully manage around state UPL statutes.57

In sharp contrast to the United States, in the United Kingdom “there is no restriction on supplying legal advice for gain,” although there are restrictions on the training and membership required to use the titles “solicitor” and “barrister.”58 In other words, much non-litigation legal activity in the United Kingdom is not reserved solely to lawyers, with the exception of a few specified areas. As a result, a good deal of what is called the practice of law in the United States could be performed by those without a solicitor’s license in the United Kingdom. Yet there is indeed a strong business market for solicitors offering business services comparable to the United States.

Surprisingly, there are firms that could potentially provide services without being licensed as an ABS, but instead choose to submit themselves to regulation.59 This suggests that the lawyer/solicitor “brand” has value both in terms of quality and some protection to clients/consumers through regulation. In particular, unlike the United States, solicitors in the United Kingdom have mandatory malpractice, which offers significant protection to clients if things go awry.60

3. Changes in Referral Fees and Legal Aid Funding

A third factor accelerating change in the U.K. legal services market is the recent ban on referral fees and the significant retrenchment in state-funding of legal services.61 These changes are pushing the United Kingdom closer to the U.S. model of vast unmet legal needs with inadequate funding to provide traditional legal services. One promise

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60. Susan Saab Fortney, Law as a Profession: Examining the Role of Accountability, 40 FORDHAM URB. L.J. 177, 189 (2012); Levin, supra note 29, at 2631.

61. The cuts have had a significant impact on client access to legal services. Nick Hilborne, Mr. Justice Mostyn: Nobody Anticipated “Savagery” of Legal Aid Cuts, LEGAL FUTURES (July 1, 2015, 12:03 AM), http://www.legalfutures.co.uk/latest-news/mr-justice-mostyn-nobody-anticipated-savagery-of-legal-aid-cuts. It has also impacted the business of lawyers who had served the legal services market that previously had more generous public funding.
of ABS firms was the possibility of offering more affordable legal services to middle and low-income clients, particularly in areas that could be more easily commoditized.\(^6\) Early data suggests that ABS firms are not at the moment helping to fill the void.\(^5\) That being said, there are some ABS models discussed below that hold some promise to make legal services more readily available and affordable, if allowed to percolate and experiment.

4. The ABS Regulatory Process

The ABS regulatory process is shaping the ABS firms. With the 2007 Act, the Legal Services Board (LSB) became the super-regulator of all legal services in the United Kingdom. The LSB publicly declares on its website that its goal is to “reform and modernise the legal services market place by putting the interests of consumers at the heart of the system.”\(^64\) That being said, the 2007 Act sets out multiple regulatory objectives:

(a) protecting and promoting the public interest;
(b) supporting the constitutional principle of the rule of law;
(c) improving access to justice;
(d) protecting and promoting the interests of consumers;
(e) promoting competition in the provision of services;
(f) encouraging an independent, strong, diverse, and effective legal profession;
(g) increasing public understanding of the citizen’s legal rights and duties;
(h) promoting and maintaining adherence to the professional principles.\(^65\)

Although only two of the eight objectives relate to protecting and promoting the interests of consumers and encouraging competition in legal services, it is clear that the remaining goals are framed through those objectives. Note that the regulatory objects quoted above use the terms “consumers” and “citizens” rather than the word “client.”\(^66\) The first LSB director, Chris Kenny, was not a lawyer, moving the center of gravity away from a lawyer-dominated system. Until the end of 2013 the

\(^62\) Robinson, supra note 12, at Part I(A).
\(^63\) Id. at 11.
\(^65\) Legal Services Act of 2007, supra note 2, at 1-2.
\(^66\) Id.
LSB offices were in Grosvenor House, which is also the home of the Competition Commission.

The LSB has had an aggressive, and sometimes antagonistic, relationship with the regulatory agencies, such as the Solicitors Regulation Authority (SRA) and the Bar Standards Board (BSB), which regulates barristers. For example, in March 2015 the LSB issued a Discussion Paper challenging “unnecessary restrictions on in-house lawyers.”67 “Where a regulator places restrictions on in-house practice over and above the minimum required by the Act, we expect it to be able to demonstrate this is necessary with compelling evidence in terms of risk to the regulatory objectives.”68

Currently the SRA, the Council for Licensed Conveyancers (CLC), and the BSB are reauthorized by the Legal Services Board to issue ABS licenses.69 This Article focuses on the SRA, which has been the most active regulator, and which regulates solicitors.

By October 2015, over 430 ASB firms were approved by the SRA.70 In a 2014 study, the SRA found that for multi-disciplinary practices, “a business that delivers reserved legal services with other professional services, such as accountancy, land and housing management, corporate services or financial services” applications have been “small.”71 They attribute part of the sluggish use of Multi-disciplinary Practices Policy Statement (MDP) ABS to a complex application process that can include duplicate and conflicting regulation.72 Some accounting firms, including KPMG and PricewaterhouseCooper (PwC), have been licensed as ABS firms.73 Since these firms have tended to compete in the legal/business advisory space for many years, it is not yet clear what difference ABS structure will make in the actual functioning of the firms.

68. Id.
69. See STEPHEN, supra note 15, at 120.
70. See Register, supra note 6.
71. MDP Policy Statement, supra note 5 (“the number of applications from MDPs has been small (in the tens rather than the hundreds) and feedback from potential applicants and others has indicated that part of the problem relates to the SRA rules.”).
72. Id.
In theory this self-examination of the regulatory process should be the natural outcome of regulatory competition, in which firms may elect to be regulated by other authorized bodies or—if allowed—choose not to be regulated at all, which means foregoing the ability to use the titles “solicitor,” “barrister,” and “conveyancer.”\(^{74}\) It appears from the public statements, however, that the rethinking of the regulatory scheme is driven by LSB pressure to improve competition and reduce self-interested regulation. This raises an understandable concern that the interest in competition may trump the interest in consumer protection. This risk of a race to the bottom is one fundamental objection to opening up the U.S. market to non-lawyer ownership and control.

IV. ABS Models

Set out below are several models of alternative business structure firms. These examples offer an opportunity to explore in greater detail the advantages, inner-workings and some of the difficulties that come with ABS structure.

A. Small Firm—Transition Planning

John Welch & Stammers Solicitors (JWS) in Oxfordshire town of Whitney, United Kingdom was the first ABS firm authorized.\(^{75}\) This seventy-five year old firm has five solicitors (three partners), one licensed conveyancer, one legal executive, and another recently added trainee. The firm states on its website that “[t]he main purpose of JWS becoming an ABS was so that our non-lawyer Practice Manager Bernardette Summers could be a partner. Although the introduction of ABS’s allows more diversity in law firms, JWS has not changed at all and will always retain its ethos as far as it’s [sic] loyal client base is concerned.”\(^{76}\) John Welch & Stammers’ choice to embrace ABS status is representative of a fairly common cohort of firms. A Legal Services Board Survey of early adopters of ABS status indicated that the significant majority of ABS firms were not changing their target clients.\(^{77}\)

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Why convert to an ABS if it does not result in change in services? The first wave of ABS firms included many other examples of small firms converting to ABS status to bring in a non-lawyer as a partner, it appears for succession planning and respect purposes. For example, the solicitor’s spouse may have had a long-standing role in the firm, and allowing that spouse to become a partner may offer certain tax advantages (receiving income as corporate profits rather than salary may lower the partner’s taxes.) In terms of business theory, ownership gives enhanced incentives to promote the interests of the firm. The symbolic value of being an equally valued member of the team should not be discounted. A key person is named, honored, and rewarded, which encourages that person to stay with the firm. Too many law firms fail because they do not have sufficient business acumen. Valuing that acumen promotes the goal of providing quality legal services.

Remember that the Compliance Officer for Legal Practice is required to assure that there is compliance with the legal and ethical obligations of the firm. In addition, the solicitors, conveyancers, and legal executives all are subject to individual regulation and codes of conduct relevant to their field. If there is an ethical failure, the firm—as well as the individual professionals—risks losing its license or being sanctioned.

But the small firm adopters are not sufficient to achieve change in the provision of legal services. Observers are more interested in the ABS firms that introduce new delivery models. Set out below are additional examples of ABS firms that represent business models that would be more difficult—but not impossible—to implement in the United States, which prohibits the ABS entity structure. These were chosen because they provide vivid examples of honing delivery systems for better-quality volume services, building on an existing consumer-
oriented brand, pooling of expertise, and nonprofit and for-profit partnerships. All seek operational efficiency, an essential attribute of all industries in today’s world.82

B. Riverview Law

Riverview Law has attracted a great deal of attention, with indication that it is emerging as a success story.83 Riverview offers a conceptual shift from an income-driven model to a capital appreciation model. Riverview focuses on “legal advisory outsourcing,” which “is focused on the 60-70% of legal work that large organizations do every day of the week, every week of the month, every month of the year that can be packaged into long-term contracts.”84 It focuses on the more routinized work, including litigation, leaving in-house counsel to handle the policy and other high-end work, although Riverview input may affect that policy development. Riverview enters into long-term contracts with corporations with the goal of providing tailored legal services.

The law firm arose from the perspective of a customer-oriented service industry that happens to offer legal services. It is no accident that the prime mover, Karl Chapman, has a strong track record in forming and nurturing new businesses. Prior to Riverview Law he had formed AdviserPlus Business Solutions, which is an advisory outsourcing business that provides human resources and health and safety advice and services to a range of businesses.85 This gave Chapman insights into the infrastructure needs of businesses. It was AdviserPlus client requests wishing for legal services to be offered in a similar model that was one impetus for Riverview.86 Initially Riverview anticipated that the main users of its services would be small and midsized businesses

82. Alison Bond, Beware the Stealth ABS Revolution, LAWYER (Jan. 21, 2015), http://www.thelawyer.com/beware-the-stealth-abs-revolution/1016436.article (“Corporates have spent the past five years improving their operational efficiency. Many would say the legal sector, in serving these clients, needs to catch up.”).

83. Heidi K. Gardner & Silvia Hodges Silverstein, Riverview Law: Applying Business Sense to the Legal Market, HARV. BUS. REV., June 4, 2014. It can be difficult to penetrate the internal story, so this description is based on what Riverview and others chose to share. I do have the benefit of public documents, such as filings on turnover, which helps confirm some factual claims.


but quickly found that larger companies were very interested in this business model.  

At first blush it may look like Riverview Law offers the same traditional legal services in the same way, except through flat fee rates. Beneath the surface, however, are both cultural and structural changes from the typical income-driven model of a U.S. law firm. It appears that the business model is built on three key features: (1) team approach to service delivery that allows for flat fee billing and long-term contracts; (2) heavy investment in human capital; and (3) a robust IT system to support the model and provide business value-added to their clients. All three of these aspects of their business model are possible because they have access to capital to build this service.

1. Client Team Work & Flat Fee

Riverview Law uses fixed fees, coupled with long-term contracts, as a central feature of its business model. Fixed fees are emerging in traditional law firms as well. But the long-term contracts, with a goal of contract renewal, create a very strong alignment of interests between the law firm and clients. This fixed-price model encourages Riverview to invest in efficiency in delivering its own legal services. It creates a structural incentive to reduce the legal problems confronting the client, which advances the business interests of the clients. This model relies heavily on both developing a very competent and effective team at Riverview to serve the needs of the client and an IT infrastructure that will allow Riverview to provide business as well as legal insights. Under this model, the best indication of providing quality services is renewal of the contracts.

2. Human Capital

To actively serve a client’s needs, Riverview Law states that it promotes a culture of team service to clients. Most traditional firms claim to offer teamwork and efficiency, but here the structural incentives in the business model promote the goals of teamwork and client satisfac-

87. Id.
88. Ronald D. Rotunda, Moving from Billable Hours to Fixed Fees: Task-Based Fees and Legal Ethics, 47 KAN. L. REV. 819 (1999).
89. See Stanford Panel, supra note 86. There is also a provocative and humorous video on YouTube emphasizing the client desire for fixed fees and the traditional law firm’s resistance to this idea. See Riverview Law, Cometh the Hour, YouTube (Aug. 20, 2012), https://www.youtube.com/watch?v=BfXhn3tf_yE.
tion. Riverview started with no legacy issues of jealousy in guarding billable hours or need to retain client credit, which makes it easier to build a team approach.

With hiring focused on meeting the needs of particular long-term clients, and tailoring skill sets to that client, Riverview Law has an incentive to hire carefully for fit both in terms of Riverview culture and client needs, and train and retain their employees to service the long-term contracts. As a recent Harvard Business School case study noted, Riverview founders worked to build “a culture of autonomy, personal responsibility, a focus on quality, and trust between employees and their managers.”\(^90\) Team members have an incentive to develop strong client expertise and, unlike the billable hour model, if team members leave then Riverview, not the client, will pay for the costs of educating and training new team members. Of course, it is difficult to penetrate whether there truly is autonomy, responsibility, and trust within the Riverview model, but they at least give voice to these goals.

Although the initial gathering of business, legal, and technology talent was from lateral hires, Riverview Law has begun to build its own training program, offering seven training contracts in 2014, with plans to award ten additional training contracts in 2015.\(^91\) Only current team members can apply for the training contracts, so they encourage “[b]udding solicitors” to join Riverview before the fall application to be able to apply for one of these training contracts.\(^92\) This process allows Riverview to assess cultural fit before making a significant training commitment in new solicitors. This is a refreshing change from many of the U.S. new delivery models, which often have little room for new entrants.\(^93\) Karl Chapman, CEO of Riverview, has said publicly that “in

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\(^90\) Gardner & Silverstein, supra note 83, at 5.


the next 5-7 years, I should be fired as Chief Executive of Riverview Law if we are still recruiting senior lawyers . . . . We should be growing our own.”

This investment in human capital also includes creating a work environment that is more attractive to talented professionals. The goal is to create “a strong corporate culture” in which “its hiring, onboarding, performance management, and compensation system all reinforced the firm’s service culture.” This means that Riverview Law spends a great deal of time on “recruitment, induction, and training” to assure that employees understand “the company’s overall vision and its specific strategy for a particular customer.” Riverview conducts much of the day-to-day service in lower cost areas, such as their main offices in Bromborough, Wirral, and Manchester. It emphasizes the liberating effects of shedding the billable hour, and a “positive, energetic and innovative environment.” They claim “competitive” salaries although their website is understandably silent on specifics.

3. Technology

A strong team model allows every member of the service team at Riverview Law to contribute data and information. For some business contracts they offer big data analytics by using a sophisticated IT structure to monitor legal issues and claims and pinpoint patterns to the client. With the commitment to long-term contracts, it becomes in Riverview’s best interest to reduce the legal problems of the client. Building a robust IT platform that was tailored to the needs of in-house clients has allowed Riverview to launch two new endeavors. In December 2014, Riverview expanded its offerings to create a technology business, creating a unit to license software modules to in-house legal

94. Stanford Panel, supra note 86.
95. Gardner & Silverstein, supra note 83, at 6. “Onboarding” is a business term that refers to integrating a new employee into the work environment.
96. Id.
98. Id.
100. For a good description of legal process outsourcing such as Riverview Law, see Anthony Notaras, Here be Monsters, LEGAL BUSINESS & CLUTCH GRP. (Feb. 2014), http://www.legalbusiness.co.uk/tech_insight.pdf (insights of Christian Sommer, Legal Director-Volume Contracting, Vodafone).
teams and even competing law firms. This does not appear in the original descriptions of Riverview’s business, but is a natural outgrowth of its IT investments. Riverview has also undertaken a partnership with University of Liverpool to bring the university’s computer science expertise to the rapidly developing Riverview systems.

4. Access to Capital

This business model requires heavy investment in personnel and technology in order to service the long-term contracts, and the marketing and business development necessary to acquire those contracts. The investors created an entity called LawVest and the initial business plan anticipated ten years before they would reach profitability. The firm has grown more rapidly than anticipated and it is on track to become profitable. Among Riverview Law’s key early investors are DLA Piper, one of the three largest law firms in the world, and AdviserPlus, the outsourcing firm that provided at least part of the business model for Riverview. Having DLA Piper as a key investor means that this cohort of owners understands the professional obligations of Riverview. But even the non-lawyer owners know that they are building a business in a regulated enterprise, so that compliance is a central obligation of the business.

5. Lessons for the U.S. Market

The Riverview Law model might in theory be possible in the United States—flat fees, long term contracts, and heavy IT investment are occurring at some firms. But the Riverview model required an investment of approximately £10 million ($15 million) in setting up the


104. See Dzienkowski, supra note 95, at 3002-15. Prof. Jonathan Molot recommends that law firms embrace an alternative capital structure that provides permanent equity as a way to encourage firms to build long-term value. Jonathan T. Molot, What’s Wrong with Law Firms? A Corporate Finance Solution to Law Firm Short-Termism, 88 S. CAL. L. REV. 1, 38-39 (2014) (concluding that it makes sense to allow some portion of equity to be held by non-lawyers in order to broaden
system. There are many barriers to obtaining that kind of investment by U.S. firms. One significant challenge is whether the firms would be able to buy the business expertise needed to launch this model. Individuals with business and IT knowledge who are risk-takers and willing to invest their labors in a service industry start-up are likely to want the ability to be more than a paid employee. They will want to have an equity interest. In addition, the relentless pressure of the AmLaw 100 and emphasis on profits per partner pressures U.S. law firms to have more immediate payout of profits rather than significant investment into the firm. For mid-size and smaller firm lawyers, it is a huge financial risk to invest millions of dollars in a new enterprise, rather than to take the profits. Even if a firm were willing to make that kind of investment, only the wealthiest firms and individual partners are able to make that kind of investment. In terms of outside investment, the traditional way to access capital in U.S. law firms is through bank loans. But what rational bank would invest that kind of money in a law firm start-up?

As noted above, another advantage of the ABS structure is mind-set and attitude. The mindset issues are twofold. First, as Prof. Bill Henderson has argued, large U.S. law firms are a victim of their own success, with a locked-in business structure that is difficult to change. In an Indiana University Law School competition set up in 2009 to build a new business model for U.S. law firms, all four teams came up with the same basic attributes of customized alternative billing arrangements, new data collection, information sharing with clients, and intensive training. Under this business model associates took lower salaries in exchange for better long-term career prospects, training and more attractive firm culture. Strikingly, these are attributes of the Riverview Law model. But Riverview did not have the “baggage” of an existing firm. Why should partners in a U.S. law firm with a large book of business invest in this model, rather than elect a short-term and less risky path of moving to another firm that would allow the partner to maintain high per partner profits, or simply taking their profits? If

the universe of potential shareholders and accommodate the risk profiles and time horizons of law firm lawyers).


106. Id. at 8.

107. Id.

108. Id. at 9.
the most profitable partners leave, the firm goes into a death spiral.  

Bill Henderson concludes that the problem ailing U.S. law firms is “the settled expectations and dulled imagination produced by several decades of large profits and high prestige.”

The second mindset problem is the tendency of experienced U.S. lawyers to want control. The ABS model envisions that a team of service professionals can come together as equals. The ABS model requires that the team, whether solicitors, barristers, licensed conveyancers, IT, or managers, knows it has professional obligations to maintain confidences and avoid conflicts, and is exposed to professional malpractice if it violates fiduciary duties.

An ongoing concern of any new delivery model is monitoring the quality of the legal services provided. Corporate actors, Riverview Law’s target clients, are generally more sophisticated and have greater ability to monitor for quality and assess value in light of the business needs. It seems likely that this Riverview structure will encourage at least as much, if not more, attention to client needs, as the client defines them, than U.S. models of service delivery.

One emerging area of concern has to do with how ABS structure can erode the more public-minded aspects of lawyering. Lawyers, in theory, have three professional obligations: “A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.” The vast majority of attention is given to client focus, and the ABS structure holds promise to improve in many cases the client service.

The second and third obligations—officer of the legal system and a public citizen with special responsibility for the quality of justice—are less clear. Again, it is not apparent that the current regulatory structure puts much emphasis on these obligations beyond limiting lying to a court and third persons. With outside investors it is not clear how much emphasis will be placed on contributing to pro bono activities and putting resources into that special responsibility to improve justice. Corporate entities in the modern era do have some room for public-interest activities, but they are mostly captured by the corporate social responsibility movement. But there appears to be a risk that profit maximization and efficiency concerns may squeeze out these public

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109. Id. at 9.
110. Id.
duties. Again, it is difficult to assess how this risk compares to the serious challenges of promoting public duties, such as pro bono, in the current U.S. service delivery models. Riverview Law mentions its “collective responsibility” and that it is “committed to positively impacting our colleagues, [its] business . . . customers businesses and the wider community” and has a commitment to “act with integrity and are proud of what we do, the role we play in supporting each other and our customers and in shaping the legal profession.”112 It is unclear, however, whether the fast-growing Riverview business has actually included those more public dimensions in their work beyond excellent client service.

C. Co-Operative Legal Services

1. The Hope

Co-Operative Legal Services Limited was one of the first three ABS firms approved by the Solicitors Regulation Authority.113 The poster-child of the promise of ABS, it builds on a strong cooperative model in which the firm is owned by its workers, customers and suppliers.114 Technically most law firms are also cooperatives because they are owned by their lawyers/workers. The U.K. Co-operative Legal Services is significantly different because the owners include a wide range of individuals and are not limited to lawyers. It currently has 8.2 million members, who join essentially for free.115

The Co-Operative Group’s move into legal services was highly symbolic for two reasons. It was the first national retail chain to be authorized as an ABS. It represents a major “brand” with a strong identity in other sectors (food, funeral services, and banking) that could be used to jump start a legal services unit.116 Additionally, the Co-Operative Group focuses on providing legal services to individuals and emphasizes “easy access to quality legal services at a price they can

afford,” which promotes the LSA goal of enhancing affordable legal services.117

The Co-Operative Group, which started this ABS law firm, has one of the highest profile cooperative operations in the United Kingdom.118 The Co-Operative banks, grocery stores, and funeral services are well-recognized entities.119 The self-proclaimed common theme running through all The Co-Operative services is “ethical.” This core approach has been part of The Co-Operative Group’s identity since it started in the late 1800s. With a strong consumer service orientation, it made sense that The Co-Operative Group would move into legal services. It initially offered legal services through a model of affiliations with solicitors who agreed to offer services at a set fee and abide by minimum standards. This essentially aligned the Co-Operative brand with the selected pool of solicitors, signaling a blend of quality and


US cooperatives often emerge from the same sentiment. (Anyone who has seen It’s a Wonderful Life knows that George Bailey, Jimmy Stewart’s character, runs a cooperative mutual fund for the purpose of breaking the power of the financially dominant and evil Henry Potter.) It’s a Wonderful Life. (Liberty Films 1946).

This model in theory could satisfy many of the core institutional values of The Co-Operative Group.

The formation of an ABS by The Co-Operative Group allowed them to offer direct legal services by hiring and supervising solicitors to handle the legal work for their target services. The Co-Operative Group’s legal services match their target audience of middle-income individuals and families: family and relationships, wills probate, personal injury, conveyancing, and employment.\textsuperscript{121}

The backing of the much larger Co-Operative Group allowed the legal unit to invest heavily to set up an office and hire hundreds of personnel and gave them the resources to incur losses until they built their book of business. Their physical operations are primarily in Manchester City, Bristol and London.

In all legal services, access to customers is a huge issue and The Co-Operative was well equipped to link its legal services to preexisting offerings. Set out in Appendix A is a brochure from The Co-operative Funeral Services. The full brochure has five references to the ability to obtain legal services if needed for settling the estate of a loved one. Similarly, the Co-operative Banking Services website and brochures refer customers to The Co-Operative Legal Services Helpline.\textsuperscript{122}

In Spring 2013, The Co-Operative Group began a clever marketing campaign of commercials, emphasizing that most lawyers make clients feel small and child-like, but the Co-Operative Legal Services “promised to be straight-forward with fixed fees for a range of legal needs.”\textsuperscript{123} Given the range of services, such as estate, family law, conveyancing, and personal injury work,\textsuperscript{124} good service may also allow the Co-Operative Group to have repeat customers.

Given the Co-Op’s strong consumer focus, it seemed well-structured to avoid the erosion of professional values. Christina Blacklaws, former Director of Policy of Co-Operative Legal Services pointed out that the ability to function as an ABS in the co-operative model allowed them to avoid “the competing and conflicting interests” of a partnership in the

\textsuperscript{120} See Stephen, supra note 15, at 117, 127-43 (discussing branding).

\textsuperscript{121} Coop. Legal Servs., http://www.co-operativelegalservices.co.uk/ (last visited Nov. 28, 2015). Their motto is “The co-operative legal services: here for you for life.” Id.


\textsuperscript{124} Coop. Legal Servs., supra note 121.
traditional practice of law.125 “We are fortunate that we have internal funding where we don’t have to compromise our integrity or vision.”126 As other commentators noted, “[c]rucially, as a mutual, it is not under the same pressure as its quoted competitors to generate short-term gains for institutional shareholders. The Co-Op can therefore afford to play a longer game in the new world of Alternative [B]usiness Structures.”127

2. The Reality

One major challenge of aligning legal services with a major brand is that the erosion of both the financial stability and brand in other units may negatively impact the legal unit. The Co-Operative Bank was part of a rescue plan in 2013, reducing The Co-Operative Group’s share of the banking business.128 In addition, the company was rocked by very disruptive management issues that resulted in significant restructuring in 2014.129 These events resulted in major financial and reputational hits for The Co-Operative group. In addition, the rapid changes in the legal services personal injury market put further stress on Co-Operative Legal Services.

In April 2014, Christine Blacklaws, the well-respected director of Co-Operative Legal Services left the CLS to form an ABS consultant service.130 The 2014 financials indicate that the legal services unit revenues were down from £33m to £23m.131 The Cooperative Annual Statement attributes this to changes in the personal injury market.132 At first blush this revenue decline looks ominous, but the Group moved

126. Id. at 13.
132. Id.
from a £2.3 billion loss in 2013 to a £216 million profit in 2014.133 The ability to have the emerging legal unit supported by other divisions is the advantage of combining services. The question is how strong The Co-Operative Group is committed to its legal services. To date, they claim a very strong commitment. CLS is focusing on its core business of legal advice, probate and estate administration, personal injury, employment, wills, family law and conveyancing.134 These are the legal needs of middle income individuals, who are the Co-Operative Group’s target users for all of their services. The access to capital allows the business to weather these rocky initial years and gives more space for the practice to take off.

The ABS model allows The Co-Operative Group to build on the economies of scale and integrate services between and among its various units. The alternative of a referral service prevents the legal unit from monitoring quality control and obtaining economies of scale by bringing the legal services in-house. Most important, the ABS structure allowed the legal unit to weather a rough business year. Had it been a traditional law firm, without outside support, it presumably would have closed.

D. LegalZoom

LegalZoom is the first U.S. business to be licensed as an ABS firm.135 The U.S. business model is well known, although often misunderstood by lawyers who simply see it as a static library of forms. LegalZoom provides online guidance to lead their primary users, individuals and small businesses, to the proper and tailored form to meet their goals.136 The forms are designed for use in all fifty states, the District of Columbia, and can be tailored to 2,900 U.S. counties.137 For $149, plus the state filing fee, you can create a limited liability corporation.138 There are categories to assist in “Running Your Business,” such as

133. Id. at 6.
corporate documents (by-laws, annual reports, corporate minutes), trademarks, patents, compliance, and leases. You can prepare a will and trust, file for bankruptcy and divorce, prepare a prenuptial agreement and find resources relevant to a host of other personal legal services. Need a Pet Protection Agreement? LegalZoom has one to tailor for your needs. In addition to the “portfolio of interactive legal documents,” they also offer “subscription legal plans and registered agent services.” With over two million business and family users, LegalZoom has very high name recognition in the United States.

In the United States, LegalZoom has to carefully moderate its business model to avoid running afoul of unauthorized practice of law concerns. In small print at the bottom of what appears to be every page is the following disclaimer:

Disclaimer: Communications between you and LegalZoom are protected by our Privacy Policy but not by the attorney-client privilege or as work product. LegalZoom provides access to independent attorneys and self-help services at your specific direction. We are not a law firm or a substitute for an attorney or law firm. We cannot provide any kind of advice, explanation, opinion, or recommendation about possible legal rights, remedies, defenses, options, selection of forms or strategies. Your access to the website is subject to our Terms of Use.

This disclaimer is essential to maneuver around unauthorized practice requirements in the United States. A few states have challenged the LegalZoom service, but have succeeded primarily in assuring this disclaimer. The claim that they do not provide “any kind of advice, 

140. LegalZoom Registration Statement, supra note 137, at 1.
141. See id. at 1-2. According to their Registration Statement, LegalZoom has a 60% aided brand awareness (i.e. survey respondents recognized the brand with a prompt).
142. LegalZoom, supra note 136.

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explanation, opinion or recommendation” is a legal fiction. It is hard to envision how a robust online body of legal documents, along with computer guided questions that tailor the documents to the users’ goals, can be developed without a functional legal analysis and recommendation embedded in it. In anticipation of a public offering, LegalZoom filed an extensive SEC Registration Statement in 2012. It devoted a full page in large font to declare that “[e]veryone deserves access to quality legal services so they can benefit from the full protection of the law.” In LegalZoom’s own framing, it provides legal services for purposes of SEC filings, but not legal services for purposes of unauthorized practice of law statutes.

The acceptance of this legal fiction is not surprising. A broad interpretation of unauthorized practice statutes is increasingly intellectually indefensible, especially because of a concern that the impetus to exclude others is motivated by a desire to give lawyers a competitive advantage. Readily available information on the internet and other online resources makes consumers skeptical of a claim that legal documents cannot be delivered in a cost effective manner for routine matters.

In the United States, LegalZoom maintains a relationship with a pre-vetted list of attorneys with their subscription legal plan. It essentially connects customers to independent attorneys. The subscription plan provides for follow-up consultation, document review, and discounts for subsequent legal services.

The 2012 LegalZoom Registration Statement did not lead to a public offering. Its growth, while healthy, did not appear to offer sufficient appeal to the market. Instead, LegalZoom ultimately raised funds

144. LEGALZOOM, supra note 136.
145. LegalZoom Registration Statement, supra note 137.
146. Id. (referring to the Introduction).
147. Id. at 3-4.
150. LegalZoom Registration Statement, supra note 137, at 4.
151. Michael Carney, The $425M LegalZoom Deal is a Win for VCs, but Less Exciting for the Company or LA, PANDO (Jan. 6, 2014), https://pando.com/2014/01/06/the-legalzoom-deal-is-a-win-for-vcs-but-less-exciting-for-the-company-or-la/.
from a European private-equity firm, Permira, with reported investment of approximately $240 million.\footnote{Current Investment: LegalZoom, Permira, \url{http://www.permira.com/technology/investments/legalzoom} (last visited Nov. 28, 2015).}

LegalZoom was monitoring the regulatory changes in the United Kingdom from the early stages and is now actively expanding into the U.K. market.\footnote{Interview with Edward Hartman, Co-founder, LegalZoom (Oct. 31, 2015).} Its ABS license became effective on January 7, 2015. As part of that expansion, LegalZoom recruited Craig Holt from Quality Solicitors to run the LegalZoom U.K. and build the law firm.\footnote{LegalZoom had a “soft launch” in the UK through collaboration with QualitySolicitors. Craig Holt has left QualitySolicitors and will work on building the new LegalZoom law firm. See Neil Rose, Exclusive: “We will be biggest brand in UK,” says LegalZoom, LEGAL FUTURES (Dec. 18, 2014), \url{http://www.legalfutures.co.uk/latest-news/exclusive-we-will-biggest-brand-uk-says-legalzoom}.} As of the writing of this article, the firm is not yet fully launched.

There are three likely advantages that the ABS structure will offer to the U.K. LegalZoom. First, by identifying as a law firm, LegalZoom will be able to integrate its online materials with the advisory services of solicitors. One goal of ABS structure, according to Craig Holt, is to give LegalZoom “broader freedom in how we work with lawyers.”\footnote{John Hyde, Legal Zoom Enters Market with ABS Licence, LAW SOCY GAZETTE (Jan. 7, 2015), \url{http://www.lawgazette.co.uk/practice/legalzoom-enters-market-with-abs-licence/5045879.fullarticle} (quoting Craig Holt).} It can more closely monitor the work product, rather than simply handing off the case to a separate solicitor. This, in theory, could result in enhanced consistency, quality control, and a stronger feedback loop so that the solicitors have an ongoing incentive to improve the LegalZoom product. The flip-side question is whether that monitoring will result in a floor of minimally acceptable work-product rather than more tailored, bespoke work that may be more expensive. Again, however, it is unknown whether lawyers in traditional firms (i.e., no outside owners or investors) that offer high-volume legal services also have pressure to cut corners. With a widely known national brand and easy ability for consumers to report whether they have had a good or bad experience, LegalZoom would have a strong business incentive to correct failures. It also has a business and professional need to analyze more closely what constitutes quality in legal services provided by attorneys, beyond simply capturing client satisfaction.\footnote{Interview with Edward Hartman, supra note 153.}

Having integrated services provides a database to study more deeply this question.

Beyond integration, providing services as a law firm will allow LegalZoom to offer long-term services to individual and small-business
clients, following the client through the range of needs that one encounters in our legally-driven world. As LegalZoom’s knowledge, experience and database grows more sophisticated, it can implement its mission to provide affordable access to more sophisticated services to its target clients. As it states in their mission, “putting the law within reach of millions of people is more than just a novel idea—it’s the founding principle.” The integration of lawyers with the LegalZoom online services will allow affordable partnerships between the clients and their lawyers. This partnership is a deepening of the services envisioned by LegalZoom.

The most provocative consequence of becoming licensed as an ABS firm is that LegalZoom is submitting itself to regulation. Much of what it does would not constitute reserve activity in the United Kingdom and could be done without being called a law firm. But by embracing the ABS license, and embracing the regulatory standards concerning good management and professional conduct, and maintaining malpractice insurance, that broad disclaimer on the U.S. site would not apply in the United Kingdom. It is the practice of law, it will have attorney-client privilege to the extent it is recognized in the United Kingdom, and it will have all the fiduciary obligations that are imposed on solicitors offering legal services. In the United States, the users of its services are called customers; in the United Kingdom, they will be clients. It appears that LegalZoom clients/consumers in the United Kingdom will receive greater protection than their counterpart consumers in the United States.

This decision to submit to regulation is a very positive signal for the legal profession. Being able to call itself a law firm, and building a team of solicitors who will have or develop expertise needed to service their clients, is a signal that the solicitor brand—for lack of a better word—is powerful and valuable. It is signal of quality and professionalism.

E. The Personal Injury Market

ABS firms have had a huge impact on the personal injury (PI) market in the United Kingdom. By 2014, one-third of personal injury turnover

159. Interview with Edward Hartman, supra note 153.
160. See Knapp, supra note 157, at 835-36 (arguing that allowing LegalZoom to practice as a firm would “reduce risk to consumers while still providing the legal services they need”).
(billings) were from ABS firms. The rapid change and consolidation in this practice area were driven by what many perceived as inefficiencies in the market and by other regulatory changes that banned referral fees and changed some aspects of fee shifting in personal injury litigation.

One might legitimately fear that opening up the PI market to non-lawyer owners and investors would encourage the entry of “low-price/low-quality” suppliers. As developed in greater detail in the final section, it is difficult at this point to assess quality changes in legal services in this area.

The PI market in the United Kingdom is very large, with almost one million claims, mostly small, brought in 2014-15. About twenty years ago, the U.K. market saw a rise in claims management companies (CMCs), which in the most positive models offered integrated services, so that an individual involved in an accident could make one phone call and have access to advice and services in medical care, car repair, car rental, insurance and related issues. After significant concerns about abuse and the encouragement of a “compensation culture,” CMCs became regulated. Law firms began to offer claims-processing even before ABS structure was allowed. With the advent of ABS form, law firms are moving rapidly to take over CMC functions and offering integrated services.

Below are brief descriptions of two firms that have had a role in reshaping the personal injury practice in the United Kingdom.

1. Minster Law

Minster Law was founded in 2003 by Adrian Christmas. Soon after the Legal Services Act of 2007, Minster began strategic acquisition of other practices to build its personal-injury caseload. Minster also worked


163. See Stephen, supra note 15, at 28 (using phrase to analyze whether advertising results in reduction of quality; states that “where price advertising is undertaken mostly by low-price/low-quality suppliers, price advertising will be an adverse signal of quality”).

164. Lewis, supra note 162, at 4.

with BGL, a financial services group that includes a consumer-insurance unit, to manage its claims-processing for BGL’s motor and bike-insurance customers. With 800 employees and income reported to be £107m, Minster specializes in personal injury, wills, probate, and conveyancing. In 2013, the BGL Group received an ABS license and purchased Minster, effectively making it a law firm owned by a company with insurance interests.

An insurance company owning a law firm is one area that U.S. commentators flag as of deep concern because of the conflict of interests that may arise. The firm, however, is subject to the SRA conflict-of-interest regulations, which would preclude Minster Law from suing BGL. A more subtle issue is the possibility that the solicitors will not develop aggressive theories of recovery for fear of impairing the long-term financial interests of the insurance group owner. That certainly is a theoretical concern, but the vast majority of claims are very small matters that do not involve significant legal issues. One particular risk of this ownership model is that with individual rather than institutional clients, it may be difficult for clients to discern whether the lawyers are pulling punches. It is difficult to assess based on the current limited experience whether this is a real risk, or whether it is any greater than the similar risk that exists in the US.

Minster Law presents to the world as a traditional law firm offering traditional legal services. In its public statements about public dimensions of its work it emphasizes corporate social responsibility, the public-interest language of corporations, including BLG. Minster’s contributions to making the world a better place are unconnected to the professional services of law. There is no mention of pro bono or other activities. This may simply be part of a general U.K. approach to pro bono, or may be a subtle consequence of corporate ownership, or both.

168. See Robinson, supra note 12, at 21.
169. LEWIS, supra note 162, at 28-29.
170. See supra Part IV for discussion of quality and legal services as a credence good.
171. Id.
2. Winn Legal Services

Winn Solicitors and its related entity Winn Assists, a claims management company, provide a slightly different model of a Solicitor-CMC. Initially developed by Jeff Winn in 2002, this Newcastle-based firm has had a rapid rise. With over 200 employees in 2014 and growing, and thirty-seven solicitors, it is a highly automated firm that can process a large volume of small claims through the use of technology. It is reported to have turnover of £45 million.

After becoming an ABS firm, in 2013 Winn sold 60% ownership in the firm to private equity investors JZ International and Souter Investments. The Winn core management team owns the remaining 40%. All owners sit on the parent-company board. The influx of capital has allowed Winn Solicitors to expand to take advantage of the rapid consolidation in the U.K. accident management field.

As a service industry that encourages customer feedback, both of these large volume personal injury firms are heavily reliant on client affirmation of the quality of services. This creates a strong incentive to


build customer satisfaction. This can also serve as a check on abuse or neglect.

F. Non-Profit ABS Firms

Three recent ABS firms are examples of non-profit entities creating a specialty ABS law firm to support the non-profit goals. In April 2013, Community Advice and Law Services (CALS), a non-profit, was granted an ABS license to establish Castle Park Solicitors Community Interest Company. CALS was the first non-profit authorized to own an ABS. The law firm targets middle-income clients and offers family law, employment, and immigration services. The profits from the law firm will be used to support CALS free legal aid in the areas of housing and debt issues. According to public statements at the time of the ABS, the ABS form allows for a clear distinction between the paid and the free legal services. Even with this distinction, the law firm provides services to low and middle-income clients and offers both fixed fees and reduced rates to some clients.

Nothing in U.S. regulatory structure would prevent partners of a law firm from agreeing to limit their salary or donate revenues in excess of costs to a non-profit. This is cumbersome and essentially a statement of pro bono commitment or philanthropy that rarely happens. Lawyers might attempt to create a U.S. benefit corporation, a new corporate form that allows the business entity to consider social interests. A full analysis of a public benefit corporation is beyond the scope of this article, but as with ABS firms, these new corporate forms would need to make clear that client interests come before general social interests.

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180. Rose, supra note 8.

181. The SRA lifted an earlier restriction on in-house lawyers who work for non-profits from charging for their work. While this suggests the ABS structure in theory is not needed, CALS saw an advantage of the ABS structure.


This is also not the same as agreeing that profits will go to support a specific non-profit endeavor.

BMA Law is a law firm established by the British Medical Association to provide advice to doctors.\textsuperscript{185} BMA Law offers assistance in drafting partnership agreements, conveyancing, will writing, and legal advice from healthcare specialists.\textsuperscript{186} Any surplus is put back into services for doctors.\textsuperscript{187} They offer services to the general public, but members of the British Medical Association and their families receive preferential fees.\textsuperscript{188} The initiative is a joint venture with NewLaw Solicitors, a Cardiff-based law firm.\textsuperscript{189}

Unionline is an ABS formed by two of the United Kingdom’s largest trade unions, GMB and Communication Workers Union. The two unions have almost one million workers,\textsuperscript{190} which will serve as a natural feeder to the ABS firm. Profits from the firm will go back to the unions. The firm has created a helpline and uses a blend of referrals to existing panel of law firms and keeping some work in-house.\textsuperscript{191} Like Co-Operative Legal Services, the union-owned law firm aligns itself with a strong pro-worker perspective. As with BMA Law, the firm should develop enhanced expertise to address the legal issues of their trade medical or union clients. In each, the firm is required to maintain the confidences of the client.

If BMA Law and Unionline tried to form in the United States, they might create a referral system (typically without compensation so that it does not run afoul of limits on referral fees).\textsuperscript{192} They also might negotiate group discounts or create a legal services plan. All of these U.S. approaches, however, envision that the profits go to the lawyers. As

\textsuperscript{185.} \textit{About Us}, BMALAW, http://www.bmalaw.co.uk/about (last visited Jan. 25, 2016).
\textsuperscript{186.} \textit{Id.}
\textsuperscript{187.} \textit{Id.} The British Medical Association created an independent, non-profit ABS firm to provide advice to doctors, including commercial property, trusts and estates, immigration, mediation, and regulatory issues. \textit{Membership}, BMALaw, http://www.bma.org.uk/membership/bma-law (last visited Jan. 25, 2016).
\textsuperscript{188.} \textit{Id.}
\textsuperscript{191.} \textit{Id.}
\textsuperscript{192.} \textbf{MODEL RULES OF PROF’L CONDUCT R. 7.2(b) } (2013) (“A lawyer shall not give anything of value to a person for recommending the lawyer’s services except . . . ”).
Nick Robinson notes, the heart of the ABS form is that lawyers do not get to keep all the profits.193

V. EMERGING THEMES, BENEFITS AND CONCERNS

A. Assessing Quality, Consumer Orientation and Client Satisfaction

To have a useful discussion of new delivery models for legal services, and compare the burdens and benefits, the ability to discuss and measure quality is necessary. Studies of the legal services market have struggled to obtain reliable data on quality.194 A variety of factors is used, chief among them client satisfaction.195 Yet lawyers understandably flag the point that some aspects of quality may be outside the assessment of individual clients. In economic terms, law is a credence good, typically a service or product for which it is difficult for consumers to assess quality.196

The United States has taken a more consumer oriented approach to the regulation over the last thirty years, a recognition that client perspectives are a relevant variable.197 The 1983 Model Rules of Professional Conduct expressly used the phrase “client-lawyer” relationship in the first section of the Rules to emphasize that the client, not the lawyer, should be the center of the relationship.198 A stronger consumer orientation means that lawyers cannot maintain complete control over the determination of quality. Corporate consumers may have some advantages in this regard, but even this cohort struggles to find an optimal match in terms of legal services. Corporate or organizational clients have complained that lawyers do not understand their

198. Model Rules of Prof’l Conduct R. 1.1 (2013) (competence); Id. at 1.18 (terminating a representation) (2013). This nominal nod, however, has not percolated deeply into lawyer discourse, as lawyers still routinely talk about the “lawyer-client” relationship.
underlying business needs and perspectives. A cynic might say that corporate clients only want an instrumental view of lawyers (think Enron), but this communication gap is something broader. Lawyers tend to have a strong lawyer-centric view of legal services; corporate clients have a business-centric view, in which legal dimensions are very important, but not the only or dominant variable on the table.

Lawyer rating systems, which are growing in popularity, reflect this consumer orientation, output assessment. An idea of some relevant variables can be derived from these rating systems. Martindale-Hubbell, the leading lawyer rating site in the United States, asks clients of closed cases to “assess communication ability, quality of service, responsiveness and value for the money on the specific matters for which you engaged the lawyer or law firm.” A much newer entrant to lawyer ratings, Avvo, uses a proprietary formula to assess quality, and allows clients to provide comments. At Lawyerratingz clients rate lawyers on five factors: knowledge, communication, tenacity, work quality, and value. These systems are obviously quite ragged, lack sufficient numbers to have much reliability, and can be manipulated. Even though ragged and incomplete, a transparent system of capturing client satisfaction may be one of the chief ways in which clients get access to information on quality. ABS firms like Riverview Law that rely on long-term contracts have an easier method of assessing client satisfaction through contract renewal. Firms that do large volume, low value claims like Winn Legal Services work to get their users to put their experience online, with a robust reporting system that rivals Travelocity. Firms that are owned by interest groups, such as unions and the British Medical Association, have their own incentive to make sure users are satisfied. This builds stronger outside assessment of satisfaction than a typical small firm.

199. See, e.g., Gillian K. Hadfield, Equipping the Garage Guys in Law, 70 Md. L. Rev. 484 (2011) (describing a simulation in which law and business students worked on a joint project; law students had difficulty understanding the client need to simplify a contract and thinking creatively about how to meet the client goals).


203. See supra note 143.
In this early stage of ABS firms, the regulatory process requires all firms to have a clear system for clients to complain about lawyers to the regulatory authorities—i.e., to capture client dissatisfaction. In terms of claims, early data indicates that ABS firms in both Australia and the United Kingdom do not have a higher rate of disciplinary actions than non-ABS firms.\textsuperscript{204} Indeed, there is evidence that the move to proactive systems to curb misconduct reduces attorney misconduct.\textsuperscript{205} If the client orientation improves client services—including communication and responsiveness—this would be a significant improvement. But there is still a huge void in assessing quality.

B. The Power of the Lawyer “Brand”

What is striking is the occasional ABS firm, such as LegalZoom, that could function without a law license, but chooses to be regulated so that they can be a law firm. For these firms there appears to be an open embracing of the benefits of legal regulation, including assurance of quality, independence, confidentiality, legal professional privilege and professional indemnity insurance.\textsuperscript{206}

Branding is an increasingly common topic in the U.S. legal services. Branding has many dimensions, including a personal brand and institutional/firm wide brand.\textsuperscript{207} As noted above in LegalZoom, the very word “solicitor” or “lawyer” carries with it a brand. Being a lawyer has meaning not just within the club, but the ABS experience is confirming that it has value to the external world as well.

Many of these ABS firms are developing niche practices, with a brand that will stay more closely aligned with the firm itself, not necessarily the individual solicitor.\textsuperscript{208} Solicitors who join can then be aligned with that indication of quality, expertise, technical, and multidisciplinary competence. This is a second-order branding.

\begin{thebibliography}{99}
\bibitem{205} Id.
\bibitem{206} These attributes appear on the BMA law website, but have been recurring themes—at least at an aspirational level—in conversations with ABS proponents. About Us, BMALAW, http://www.bmalaw.co.uk/about/.
\bibitem{207} KATY GOSHTASBI, PERSONAL BRANDING FOR LAWYERS IN ONE HOUR (2013).
\end{thebibliography}
C. Improving Law, Legal Systems and Administration of Justice

While there is theoretical concern that non-lawyer owners and investors will dilute the lawyer’s professional obligations to clients, the business incentives for client satisfaction and contract renewal provide a check on self-dealing. Regulation, fiduciary obligations, and malpractice offer additional checks. A more elusive question is whether the non-lawyer owners and investors will move any public obligations into the form of corporate social responsibility, with all the complexities and nuances that brings. \(^{209}\) If the corporate social responsibility has bite, then perhaps there is no change in net social good. If young lawyers demand pro bono opportunities, ABS firms will presumably respond to that market demand.

If ABS firms move away from a pro bono or other public interest focus, however, then those cohorts of lawyers are no longer offering their special expertise and unique knowledge to address unmet legal needs and improve the legal system. If ABS firms do less pro bono than other firms, then the need for a regulatory response is more compelling. It may be necessary for the regulatory systems to move beyond exhortation to do pro bono and require it, at least for ABS firms. \(^{210}\)

VI. Conclusion

The adoption of ABS form in the United Kingdom has not resulted in an immediate transformative change in the legal services industry, so some observers may shrug. It is apparent, however, that real change is happening in many firms that adopt ABS form and real benefits are emerging. These early firms offer concrete evidence that U.S. jurisdictions should look at ABS structure with a more open mind. It is time.


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- Complete the Application Form.

**Ways to pay**
- **Immediate cover** - pay in full by cash, cheque or credit/debit card.
- **Spread the cost** - pay over 12, 24, 36 or 60 months by Direct Debit.

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- Apply by discussing the options available with your Funeral Director who will help you to complete an Application Form, or
- Complete the form yourself and return it to your local funeral home.

**How to apply**
- Complete the Application Form.

**Ways to pay**
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[Image]
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